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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/751,629	01/05/2004	Yong-Jun Kwak	678-1334	2454	
28249	7590 09/11/2006		EXAM	EXAMINER	
DILWORTH & BARRESE, LLP			NGUYEN,	NGUYEN, DAVID Q	
•	OVINGTON BLVD. E, NY 11553		ART UNIT PAPER NUMBE		
	,		2617		
			DATE MAILED: 09/11/200	<b>6</b> .	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
	10/751,629	KWAK ET AL.	WAK ET AL.			
Office Action Summary	Examiner	Art Unit				
	David Q. Nguyen	2617				
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet wit	h the correspondence ac	idress			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING D/ Extensions of time may be available under the provisions of 37 CFR 1.1: after SIX (6) MONTHS from the mailing date of this communication.  If NO period for reply is specified above, the maximum statutory period v Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNIC 36(a). In no event, however, may a re will apply and will expire SIX (6) MONT , cause the application to become ABA	ATION.  ply be timely filed  (HS from the mailing date of this condoned (35 U.S.C. § 133).				
Status						
1)⊠ Responsive to communication(s) filed on 20 Ju	ulv 2006.					
	action is non-final.					
3) Since this application is in condition for allowar		ers, prosecution as to the	e merits is			
closed in accordance with the practice under E	·	•				
Disposition of Claims						
4)⊠ Claim(s) <u>1-4,6-8,10 and 20-26</u> is/are pending in	n the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
6) Claim(s) is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) <u>1-4,6-8,10 and 20-26</u> are subject to re	estriction and/or election re	quirement.				
Application Papers						
9) The specification is objected to by the Examine	r.					
10) The drawing(s) filed on is/are: a) acc		y the Examiner.				
Applicant may not request that any objection to the	•	•				
Replacement drawing sheet(s) including the correct	ion is required if the drawing(s	s) is objected to. See 37 Cl	FR 1.121(d).			
11)☐ The oath or declaration is objected to by the Ex	aminer. Note the attached	Office Action or form P7	ΓΟ-152.			
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. §	119(a)-(d) or (f).				
a) ☐ All b) ☐ Some * c) ☐ None of:						
1. Certified copies of the priority documents						
2. Certified copies of the priority documents	•		0.			
3. Copies of the certified copies of the prior	•	eceived in this National	Stage			
application from the International Bureau  * See the attached detailed Office action for a list	. , .,	occived				
dee the attached detailed Office action for a list	or the certified copies flot i	eceivea.				
Attachment(s)						
1) Notice of References Cited (PTO-892)	4) Interview Su					
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08)		/Mail Date formal Patent Application				
Paper No(s)/Mail Date	6)  Other:					

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## **DETAILED ACTION**

## Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I) Claims 1-4 and 25 relate to determining a data rate of the UE based on the uplink channel condition information and the total transmission power information.
- II) Claims 6-8, 10 and 26 relate to determining a data rate of the UE based on the uplink channel condition information and the maximum allowed uplink transmission power information.
- III) Claims 20-22 relate to determining a data rate of the UE considering information having a smaller value out of the maximum allowed uplink transmission power information and the total transmission power information and the uplink channel condition information.
- IV) Claims 23-24 relate to determining a data rate of the UE considering information having **value less than** the maximum allowed uplink transmission power information and the total transmission power information and the transmission power margin information.
- 2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination determining a data rate of the UE has separate utility such as the uplink channel condition information and the maximum allowed uplink transmission power information, a smaller value out of the maximum allowed uplink transmission power information and the total transmission power information and the uplink channel condition information, and

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value less than the maximum allowed uplink transmission power information and the total transmission power information and the transmission power margin information. See MPEP § 806.05(d).

- 3. The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.
- 4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Q. Nguyen whose telephone number is 571-272-7844. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH H. FEILD can be reached on (571)272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <a href="http://pair-direct.uspto.gov">http://pair-direct.uspto.gov</a>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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